IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

AS.No. 582 of 1994(PAUPER)

OS.511/1989 of PRINCIPAL SUB COURT,ERNAKULAM
(INDIGENT OP NO.55/1988)

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APPELLANT/PLAINTIFF:

C.K.RAMACHANDRAN, S/O.KRISHNAN, CHIRAPURATH HOUSE, CHAKKALAMUTTUKAVALA, NADAMA VILLAGE, KANAYANNUR TALUK, ERNAKULAM DT.

BY ADV. SRI.N.N.SUGUNAPALAN

RESPONDENTS/DEFENDANTS:
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1. SMT. REETHAMMA JOSEPH, W/O.JOSEPH, KATTEZHATHU COREVILLA HOUSE, CHAKKALAMUTTU KAVALLA, NADAMA VILLAGE, KANAYANNUR TALUK, ERNAKULAM DT.

2. JOSEPH, KATTEZHATHU COREVILLA HOUSE, NADAMA VILLAGE, KANAYANNUR TALUK, ERNAKULAM DT.

BY ADV. R1 & R2 BY SRI THOMAS V JACOB,
SRI K T KURIAKOSE, SRI JOMY GEORGE &
SRI SUJITH M JOSE

THIS APPEAL SUITS (PAUPER) HAVING BEEN FINALLY HEARD ON 16.10.2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.582 of 1994

Dated, this the 16th day of October, 2007

JUDGMENT

The plaintiff is the appellant. Appeal is filed against the decree and judgment passed by the trial court dismissing a suit filed by him for recovery of damages. Appellant is the owner of seven cents of land comprised in Survey No.1528 of Nadama Village. He constructed a building and was residing therein. First respondent is the owner of properties situated on the northern side of the appellant's property. Second respondent is the husband of the first respondent. He is the proprietor of M/s.Lino Chemicals and dealing with explosive materials like gun powder, etc. He was the owner of a fire works factory. On 5.3.1985 an explosion took place in the fire works factory of the second respondent and ten persons were killed. Explosive materials were seized from the possession of the second respondent and criminal case was registered against him. On 6.4.1988 another explosion took place in a shed situated near the appellant's building and his building also sustained substantial damages. Appellant issued a notice claiming compensation of Rs.1,00,000/-.

2. The defence taken by the respondents was that the explosives were kept in the building as per the directions of the Police. It was contended that the property and building belonged to them. It was also contended that the second

respondent was running M/s.Lino Chemicals. It was contended that they were not doing any business in explosive materials like gun powder and that they have no connection with the incidents took place on 5.3.1988 and 6.4.1988. Explosives seized from a fire work factory by the police were kept in the newly constructed building by the defendants without their consent and willingness. Defendants made several requests to C.I. of Police to remove the explosives from the building. On the report of the C.I. of Police there was a direction of the court to destroy the explosives. But the police did not do the same. If the Police had taken proper care the incident would not have been happened.

3. Court below found that the appellant sustained damages to the tune of Rs.47,501/-. But the suit was dismissed on the ground that necessary parties were not impleaded in the suit. Trial court further found that the explosives were kept by the Police as per the orders of the court. So the defendants cannot be made liable. It was also found that the incident took place by explosion of the articles stored by the Police in the premises of the defendants. That is a finding of fact based on good evidence.

4. Learned counsel appearing for the appellant has argued that the appellant may be given an opportunity to amend the pleadings and to implead the State and Police Officers concerned as parties to the suit. Appellant had no case that he had issued any notice as contemplated under Section 80 of Civil Procedure Code to the State or Police Officers. Suit is for recovery of damages. Incident

occurred on 5.3.1985. Since more than 22 years have elapsed from the date of incident, I do not find any useful purpose will be served by remanding the matter. Suit itself will have to be dismissed for want of evidence. I do not think it is just and proper to set aside the decree and judgment passed by the trial court and remand the matter for fresh consideration. So the appeal is only to be dismissed.

5. Learned counsel appearing for the appellant has argued that the suit as well as appeal is filed by the appellant as an indigent person. Now in spite of the finding of the trial court and this Court to the effect that the damages were caused on account of the action of the Police, he was not paid any compensation. On the other hand he will have to pay huge amount by way of court fee. Materials on record clearly establish that when the explosion took place in the factory of the second respondent in which 10 persons were killed. Explosives kept in the premises of the factory were seized by the Police and after registering a crime the explosives seized were kept in a shed situated near to the house of the appellant. The material on record shows that in fact the explosives were kept by the Police as per orders of the court. I do not think that it is just and proper to allow the State now to recover the court fee from the appellant who had already suffered loss in the year 1988 on account of action of the Police. So it is only just and proper to issue a direction to the District Collector concerned not to recover any court fee from the appellant either in the plaint or in the appeal.

In the result, appeal is dismissed. It is made clear that the appellant is not

liable to pay any court fee in the plaint or in this appeal.

C.M.P.No.9350/1992 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

A.S.No.582 of 1994

JUDGMENT

16th October, 2007.